

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

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In Re:

**Walter Kevin Brantley And Debra Carlisle  
Brantley**

**CASE NO. 13-00483-8-SWH  
CHAPTER 13**

Social Security No.xxx-xx-6649 and xxx-xx-1830  
Address:4821 Brantley Road, Zebulon, NC 27597-

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Debtors

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**NOTICE OF MOTION**

The Debtors have filed a motion pursuant to Bankruptcy Rule 3002.1(e) and N.C. Gen Stat. § 45-91, to determine whether payment of certain mortgage fees and expenses is required, which fees and expenses are contained on the **Notice of Postpetition Mortgage Fees, Expenses and Charges**, filed by you, or on your behalf, and dated 8/28/13.

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to eliminate or change your claim, or if you want the court to consider your views on the motion, then on or before 30 days after the date of this notice of motion, unless otherwise ordered, you or your attorney must file with the court, pursuant to Local Rule 9013-1 and 9014-1, a written response, an answer explaining your position, and a request for hearing at: Clerk, U.S. Bankruptcy Court, Post Office Box 1441, Raleigh, N.C. 27602-1441.

If you mail your response to the court for filing, you must mail it early enough so that court will **receive** it on or before the date stated above. **You must also mail a copy to the following:**

John T. Orcutt Attorney 6616-203 Six Forks Rd. Raleigh, N.C. 27615	John F. Logan CHAPTER 13 TRUSTEE P.O. Box 61039 Raleigh, N.C. 27661-1039
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If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the motion at a date, time and place to be later set and all parties will be notified accordingly. If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Dated: September 12, 2013

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

s/ John T. Orcutt

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John T. Orcutt  
Attorney for Debtors  
N.C State Bar No: 10212  
6616-203 Six Forks Rd.  
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**MOTION TO DETERMINE MORTGAGE FEES AND EXPENSES**

**NOW COME** the Debtors above-named, through counsel, pursuant to Bankruptcy Rule 3002.1(e) and N.C. Gen Stat. § 45-91, to determine whether payment of certain mortgage fees and expenses is required, who allege as follows:

1. The Bank Of America, N.A. is a servicer of a home loan for the purposes of N.C. Gen Stat. § 45-90(1), and is therefore subject to the notice requirements of N.C. Gen Stat. § 45-90.
2. That on 8/28/13, Bank Of America, N.A. filed a **Notice of Postpetition Mortgage Fees, Expenses and Charges** (hereinafter "**said Notice**").
3. Said Notice was filed by Bank Of America, N.A. on behalf of Bank of America, N.A., the alleged holder of home loan referenced in said Notice.
4. Said Notice asserts that Bank of America, N.A. is entitled to fees totaling **\$150.00** for the following described expenses:

i BK-PROOF OF CLAIM-R: \$150.

5. Pursuant to N.C. Gen Stat. § 45-91, for a fee to be allowed, Bank Of America, N.A. must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address within 30 days after assessing the fee.
6. Said Notice filed by Bank Of America, N.A. does not specify when the fees were incurred, and does not specify when the fees were assessed.
7. Said Notice filed by Bank Of America, N.A. does not include a copy of the explanatory statement mailed to the Debtors at the Debtors' last known address.
8. Furthermore, the filing of said Notice with a bankruptcy court does not satisfy the requirements of N.C. Gen Stat. § 45-91(1). *In re Saeed*, Bankr. No. 10-10303, (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641)(2010 Bankr.LEXIS 3267); *In re Smith*, Bankr. No. 08-07636-8-JRL,(Bankr. E.D.N.C. Nov. 8, 2012).
9. The failure by Bank Of America, N.A. to provide notice of the fees charged, as required by N.C. Gen Stat. § 45-91, constitutes a waiver of said fees pursuant to N.C. Gen Stat. § 45-91(3). See *In re Saeed*, Bankr. No. 10-10303 (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641). See also *In re Obie*, Bankr. No. 09-80794, (Bankr. M.D.N.C.,Nov. 24, 2009) (2009 WL 4113587)(2009 Bankr. LEXIS 3858). See also *In re: Hillmon*, Bankr. No. 11-80303 (Bankr. M.D.N.C., Oct. 26, 2011)(2011 Bankr. LEXIS 5536). See also *In re Smith*, Bankr. No. 08-07636-8-JRL,(Bankr. E.D.N.C. Nov. 8, 2012).
10. This motion shall serve as 30 days notice, pursuant to N.C.G.S. § 45-94 of the alleged violations hereinbefore

referenced, which notice is a condition precedent to the filing of a motion by the Debtors to recover actual damages caused by said violations, including reasonable attorney fees of at least \$500.

**WHEREFORE**, the Debtors pray that the Court enter an Order as follows:

1. Finding that Bank Of America, N.A., in violation of N.C.G.S. § 45-91, failed to provide timely, clear and conspicuous notification to the Debtors of the assessment of the aforementioned fees, charges and costs, in the amount of \$150.00 .
2. Finding that such failure by Bank Of America, N.A. constitutes a waiver of such fees, charges and costs.
3. Disallowing the aforementioned fees, charges and costs as set forth in said Notice in the amount of \$150.00 and reducing the amount owing to the Bank of America, N.A. accordingly.
4. Prohibiting Bank Of America, N.A. (Servicer) and Bank of America, N.A. (Holder), and their successors or assigns, from later assessing these fees, charges and costs to the Debtors' mortgage account.
5. Granting any other relief the Court deems just and proper.

Dated: September 12, 2013

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

s/ John T. Orcutt

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John T. Orcutt

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**CERTIFICATE OF SERVICE**

I, Charlene Ennemoser, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on September 12, 2013. I served copies of the foregoing **NOTICE OF MOTION** and **MOTION TO DETERMINE MORTGAGE FEES AND EXPENSES** by certified first-class U.S. mail, addressed to the following parties:

Bank Of America, N.A.

**Attn: Officer**

4821 Brantley Road

Zebulon, NC 27597-

Hutchens, Senter, Kellam, & Pettit, P.A.

Attorney for Bank Of America, N.A.

Po Box 2505

Fayetteville, NC 28302-

and by automatic electronic noticing upon the following Trustee:

John F. Logan

Chapter 13 Trustee

s/ Charlene Ennemoser

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Charlene Ennemoser